

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**WYNN LAS VEGAS, LLC d/b/a WYNN LAS  
VEGAS AND ENCORE**

**Employer**

**and**

**Case 28-RC-143406**

**INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA  
(SPFPA)**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union, Security, Police and Fire Professionals of America (SPFPA) (the Petitioner) seeks to represent a unit of all full-time and regular part-time security officers as defined by the National Labor Relations Act (the Act) employed by Wynn Las Vegas, LLC d/b/a Wynn Las Vegas and Encore (the Employer) at its facilities in Las Vegas, Nevada. The unit sought by the Petitioner would exclude all other employees, including security officers posted at its Tryst, Surrender, XS, and Encore Beach Club locations within the Employer's facilities, office clerical employees and supervisors as defined by the Act. The unit would consist of approximately 310 employees. At hearing, the Employer and the Union stipulated to the appropriateness of the unit sought by the Union.

Based on the record as a whole and for the reasons more fully described below, I find the petitioned-for unit is an appropriate unit.<sup>1</sup>

**DECISION**

**1. Hearing and Procedures.** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

**2. Jurisdiction.** At the hearing, the parties stipulated, and I find, that the Employer, Wynn Las Vegas, LLC d/b/a Wynn Las Vegas and Encore, a Nevada limited liability corporation, maintains an office and place of business in Las Vegas, Nevada, where it operates resort hotels and casinos. During the 12-month period ending December 23, 2014, the Employer, in the course and conduct of its business operation described above, received

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<sup>1</sup> At the hearing, the parties introduced evidence as to the appropriate hours for balloting. However, the selection of polling hours is not an issue to be determined in this decision as the selection of the time and place of elections is better left to the administrative discretion of the Regional Director. *Halliburton Services*, 265 NLRB 1154, 1154 (1982). See also *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954).

gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Nevada. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board's exercise of jurisdiction in this matter will accomplish the purposes of the Act.

**3. Labor Organization Status and Claim of Representation.** The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The record also shows that Petitioner does not admit to membership employees other than guards as defined by the Act, and also that it is not affiliated directly or indirectly with an organization which admits to membership employees other than guards. The Petitioner claims to represent certain employees of the Employer.

**4. Statutory Question.** As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

**5. Unit Finding.** Upon the opening of the hearing, the parties stipulated that a unit consisting of all full-time security officers,<sup>2</sup> excluding security officers who are assigned to work at certain named nightclubs within the Employer's property and all other employees, is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The record shows that the Employer's security officers are guards as defined by the Act. For the reasons set forth below, I find that the unit stipulated to by the parties is an appropriate unit as the employees comprise a readily identifiable group and share a community of interest.

#### **A. The Employer's Operations**

The Employer operates resort hotels and casinos in Las Vegas, Nevada, employing approximately 310 security officers that are responsible for protecting the Employer's assets, ensuring the safety of guests and other employees, and performing regulatory functions required by the Nevada Gaming Control Board. The regulatory functions include transporting money and gaming chips to and from the casino gaming tables to the cashier or cage. The Employer assigns the security officers to specific posts located on the gaming floors and throughout the hotels. For most employees, the post assignments change from day to day.

On its premises, the Employer maintains several dance club venues, including Tryst, Surrender, XS, and Encore Beach Club. A separate group of security officers are scheduled and assigned to work at these establishments.

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<sup>2</sup> The parties' stipulation makes reference to "security officers as defined by the Act." Based on the record as a whole, it appears evident that the parties meant and intended to stipulate that the Unit should include the Employer's security officers, which are acknowledged to be guards as defined in the Act.

**B. The Unit, as Stipulated by the Parties, is an Appropriate Unit Under Section 9(b) of the Act.**

Pursuant to Section 9(b) of the Act, it is necessary for me to determine whether the bargaining unit described in the Petitioner's petition is appropriate. The record reflects, and I find, that the Employer's security officers are guards as defined in the Act. As the petitioned-for unit includes guards, it must exclude all other employee classifications as proscribed by Section 9(b)(3) of the Act. *Wells Fargo Alarm Serv.*, 289 NLRB 562, 564 (1988); *Brink's, Inc.*, 226 NLRB 1182, 1183-84 (1976).

I find that the full-time and regular part-time security officers who are assigned posts on the gaming floors of the Employer's casinos and throughout its hotels constitute an appropriate unit as they are a readily identifiable group and share a community of interest. See *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 17 (2011). The record indicates that these security officers work in same departments and are employed in the same, job classification. Furthermore, these security officers are assigned to posts throughout the facility that require the officers to perform the same functions – to protect the Employer's assets, perform regulatory functions, and assist guests. For these reasons, I find that the unit, as stipulated to by the parties, is appropriate.

Moreover, I find that the the security officers assigned to posts at the Employer's nightclub facilities are properly excluded as there has been no showing or contention that the excluded employees share an overwhelming community of interest with the included employees.

Accordingly, based upon the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed by the Employer at its facilities in Las Vegas, Nevada, excluding all other employees, security officers posted at Tryst, Surrender, XS, and Encore Beach Club at the Employer's facilities, office clerical employees, and supervisors as defined by the Act.

There are approximately 310 employees in the unit found appropriate herein.

**DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.<sup>3</sup> The employees who are eligible to vote are those in the unit who are

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<sup>3</sup> Employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be stopped from objecting to non-posting of notices if it is responsible for the non-

employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

## **INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Regional Office, 2600 N. Central Avenue, Suite 1400, Phoenix, Arizona, 85004, on or before **January 23, 2015**. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

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posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least five days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

This request must be received by the Board in Washington by January 30, 2015. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov)<sup>4</sup>, but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 16<sup>th</sup> day of January 2015.

/s/ Cornele A. Overstreet  
Cornele A. Overstreet, Regional Director  
National Labor Relations Board  
Region 28  
2600 North Central Avenue, Suite 1400  
Phoenix, AZ 85004

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<sup>4</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, [www.nlr.gov](http://www.nlr.gov).

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**AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 16, 2015, I served the above-entitled document(s) by facsimile and regular mail upon the following persons, addressed to them at the following addresses:

Gregory J. Kamer, Attorney at Law  
Kamer Zucker Abbott  
3000 West Charleston Boulevard, Suite 3  
Las Vegas, NV 89102-1990  
Fax: (702)259-8646

Wynn Resort, LLC  
3131 Las Vegas Boulevard South  
Las Vegas, NV 89109-1967  
Fax: (702)770-1628

Scott A. Brooks, Attorney at Law  
Gordon A. Gregory, Attorney at Law  
Gregory, Moore, Jeakle & Brooks, P.C.  
65 Cadillac Sq., Suite 3727  
Detroit, MI 48226-2893  
Fax: (313)964-2125

International Union, Security, Police and  
Fire Professionals of America (SPFPA)  
25510 Kelly Road  
Roseville, Mi 48066-4932  
Fax: (586)772-9644

**January 16, 2015**

Date

Nancy E. Martinez  
Designated Agent of NLRB

Name

***/s/ Nancy E. Martinez***

Signature